

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

RICHARD DALE HAGEDORN, et al.,

Plaintiffs,

v.

MARTA DIAZ, et al.

Defendants.

Case Number C 06-00796 JF

ORDER¹ GRANTING MOTIONS TO
DISMISS AND DISMISSING ACTION
WITHOUT PREJUDICE FOR
FAILURE TO EFFECT SERVICE OF
PROCESS

On August 18, 2006, this Court issued an order (“August 18 Order”) conditionally denying the motions of all Defendants seeking dismissal for failure to effect service of process; the order was conditioned upon (1) Plaintiffs’ personal service of the summons and complaint upon each defendant by August 31, 2006 and (2) Plaintiff’s filing of proof of service by September 5, 2006. At the hearing, the Court explained that the “summons” is a document separate from the complaint that is issued by the Court, and that in order to be effective, each defendant must be served with the summons as well as the complaint.

¹ This disposition is not designated for publication and may not be cited.

On August 25, 2006, Plaintiffs filed an "AFFIDAVIT of SERVICE" stating that they were "holding FIRM" in their belief that they previously had effected proper service upon all Defendants by mailing their "Complaint and Summon" to those Defendants. Plaintiffs stated, however, that they would use a "legal processing service" to re-serve Defendants. On September 1, 2006, Plaintiffs filed a "NOTICE of SERVICE" again contending that Plaintiffs' original mailing on February 6, 2006 was sufficient to effect service of process. Plaintiffs stated that in an abundance of caution they had an independent process server personally serve Defendants with a copy of the "Original Complaint & Summon" dated February 6, 2006, a copy of Plaintiffs' "Affidavit of Service," and a copy of David Silberman's Letter dated February 13, 2006. Plaintiffs submitted a proof of personal service of these documents.

On September 8, 2006, Defendants filed requests that the action be dismissed for failure to effect service of process. The Court has reviewed the file and the docket. There is no documentary evidence that an official summons ever has been issued in this case or that a proper return of service has been filed. The Court informed Plaintiffs at the hearing that the summons is a particular document that is issued by the Clerk's Office and that must be served with the complaint in order to effect proper service of process. The Court stated expressly in its August 18 Order that the documents Plaintiffs previously had served did not appear to include an official summons. Accordingly, personal service of these documents did not cure the defect. The Court has afforded Plaintiff ample opportunity to obtain a summons and effect proper service of process as to each defendant. Plaintiffs have failed to do so. Accordingly, the Court will dismiss the action against all Defendants for failure to effect service of process.

ORDER

The action is DISMISSED WITHOUT PREJUDICE as to all Defendants for failure to effect service of process. The Clerk of the Court shall close the file.

DATED: September 25, 2006


JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

2 Linda Lee Hagedorn & Richard Dale Hagedorn
650 Castro Street #120-467
3 Mountain View, CA 94041

4 David A. Silberman
San Mateo County Counsel's Office
5 400 County Center, 6th Floor
Redwood City, CA 94063

6 David Sheuerman
7 Sheuerman, Martini & Tabari
1033 Willow Street
8 San Jose, CA 95125